



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **15 CFR Part 998**

**[Docket No. 230717-0169]**

**RIN 0648-BM21**

### **Shore Leave for Professional Mariners of the National Oceanic and Atmospheric Administration**

**AGENCY:** Office of Marine and Aviation Operations (OMAO), National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** On December 23, 2022, the President signed into law the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY 2023 NDAA). Pursuant to the FY 2023 NDAA, this final rule establishes shore leave regulations for NOAA's professional mariners and authorizes payment of the difference between a NOAA professional mariner's temporary and permanent rates of pay for annual leave accrued while temporarily promoted. This final rule also makes clerical amendments to create a new subchapter specific to NOAA Marine and Aviation Operations.

**DATES:** This rule is effective October 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** LCDR Zachary Cress, NOAA Corps, OMAO Executive Affairs Division, 301-713-1045.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In addition to commissioned officers of the NOAA Corps, NOAA Marine and Aviation Operations employs civilian professional mariners who serve in crew positions on NOAA ships as credentialed licensed engineering officers, unlicensed engineers,

licensed mates, engineering electronics technicians, able and ordinary seamen, stewards, and survey technicians as well as non-credentialed, but vitally important electronics technicians who maintain ships' mission systems.

Unlike NOAA commissioned officers, credentialed NOAA professional mariners work exclusively on NOAA ships and do not rotate between sea and shore assignments. Non-credentialed electronics technicians rotate between sea and shore duty within NOAA Marine and Aviation Operations Engineering Branch, but are required, as a condition of employment, to perform duties at sea and so earn shore leave.

Commercial employers of credentialed mariners typically employ rotational staffing models in which mariners work on a ship for a specified period and are off for a specified period, such as 2-on-1-off, in which a mariner may work, for example, 28 days on followed by 14 days paid time off. NOAA, as a Federal agency, cannot fully implement rotational staffing models without the authority to provide additional paid time off.

### **Shore Leave**

Shore leave is a leave of absence, in addition to earned annual leave, that is earned by employees serving aboard oceangoing vessels. Unlike annual leave, shore leave is earned in whole days rather than hours, and unused shore leave is not payable. Under existing law and regulations, shore leave earnings are limited to 2 days for each 30 calendar days of qualifying service.

Section 11706 of the FY 2023 NDAA authorizes NOAA to prescribe regulations for shore leave for its professional mariner workforce without regard to the requirements of 5 U.S.C. 6305 and, by extension, the regulations implementing 5 U.S.C. 6305 at 5 CFR part 630, Subpart G. Section 11706 of the FY 2023 NDAA provides that such regulations shall require NOAA professional mariners serving aboard oceangoing vessels to be granted 4 days of shore leave per 14-day pay period.

This final rule establishes such shore leave accrual rates for NOAA professional mariners. Because a professional mariner may join a NOAA ship in the middle of a pay period, and because ship sailing schedules do not conform to established pay periods, these regulations allow professional mariners to earn 1 day of shore leave for each 3 and one-half days of consecutive periods of assignment such that they may earn the required 4 days of shore leave for a 14-day pay period.

This final rule adopts most of the conditions of qualifying service for which shore leave may be earned under 5 CFR part 630, subpart G, but departs from the requirement that they be earned only in relation to extended voyages of 7 consecutive days, such that they may be earned for any consecutive period of work aboard a NOAA ship. This final rule also adopts the same conditions of granting and forfeiture of shore leave under 5 CFR 630.704.

### **Temporary Promotion**

Section 11706 of the FY 2023 NDAA also requires that regulations established for shore leave provide that temporarily promoted NOAA professional mariners may be paid the difference between their temporary and permanent rates of pay for leave accrued while temporarily promoted.

NOAA professional mariners are often temporarily promoted to the next higher grade to fill an absence when they are qualified and hold the appropriate credential and/or license to serve in that higher grade. For example, a third assistant engineer may be temporarily promoted to second assistant engineer to fill a vacancy and perform the specific duties of that position. Temporary promotions are made only for full pay periods, and a temporarily promoted professional mariner receives the pay of the grade to which they are temporarily promoted for the specified pay period(s). However, at present, any hours of annual leave earned while temporarily promoted are paid out at the professional

mariner's permanent pay rate, rather than at the temporarily increased pay rate at which they earned that leave.

This final rule authorizes payment of the difference between a NOAA professional mariner's temporary and permanent rates of pay for leave accrued while temporarily promoted.

### **Housekeeping**

Part 998 of this title is currently placed within subchapter G, which concerns the Requirements for Certification by NOAA of Non-Federal Assets into the Integrated Coastal and Ocean Observation System. NOAA Marine and Aviation Operations rules are not within the scope of that subchapter. This final rule creates a new subchapter H for NOAA Marine and Aviation Operations rules. This final rule also renames part 998 from "National Oceanic and Atmospheric Administration Commissioned Officer Corps" to "Marine and Aviation Operations" in recognition that the name of part 998 should be inclusive of the entire NOAA Marine and Aviation Operations workforce rather than a subset of that workforce, the NOAA Commissioned Officer Corps (NOAA Corps).

### **Classification**

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the Administrative Procedure Act (APA) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this final rule because this rule falls within the agency management and personnel exception as it strictly regulates NOAA professional mariner personnel, addresses internal agency management, and does not affect persons outside the agency.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This regulation is exempt from the notice and comment provisions of the APA. Therefore, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do

not apply. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

This rule does not have any collection of information requirements under the Paperwork Reduction Act.

**List of Subjects in 15 CFR Part 998**

Administrative practice and procedure, Government employees, Military personnel.

Dated: July 18, 2023,

**Richard Spinrad,**

*Under Secretary of Commerce for Oceans and Atmosphere, NOAA Administrator,  
National Oceanic and Atmospheric Administration.*

For the reasons set out in the preamble, NOAA amends 15 CFR chapter IX as follows:

**PART 998 – MARINE AND AVIATION OPERATIONS**

1. The authority citation for part 998 continues to read as follows:

Authority: 33 U.S.C. 3001 et seq.

2. Revise the heading for part 998 to read as set forth above

3. Under authority of 33 U.S.C. 3001 et seq., add subchapter H to read as follows:

**SUBCHAPTER H – REGULATIONS OF NOAA MARINE AND AVIATION  
OPERATIONS**

4. Transfer part 998 to subchapter H.

5. Amend part 998 by adding subpart E, consisting of §§ 998.50 through 998.54, to read as follows:

**Subpart E - Shore Leave**

Sec.

998.50 Applicability.

998.51 Definitions.

998.52 Computation of shore leave.

998.53 Granting shore leave.

998.54 Pay for temporary promotion.

**Authority:** 33 U.S.C. 3079b

**Subpart E - Shore Leave**

**§ 998.50 Applicability.**

This subpart applies to professional mariners as defined in section 3079b(c) of title 33, United States Code, and in § 998.51, who are regularly assigned duties aboard a NOAA ship. An employee is considered to be regularly assigned when his or her continuing duties are such that all or a significant part of them require that he or she serve aboard a NOAA ship. Temporary assignments of a shore-based employee of the Administration, such as for limited work projects or for training, do not constitute a regular assignment. This subpart does not apply to commissioned officers of the NOAA Corps serving on NOAA ships.

**§ 998.51 Definitions.**

*NOAA ship* means a research or survey vessel owned or operated by NOAA as part of the NOAA fleet defined at 33 U.S.C. 891(2), but does not mean a vessel owned or operated by NOAA under the jurisdiction of the NOAA Small Boat Program.

*Professional mariner* means an individual employed by the Administration on a NOAA ship who has the necessary expertise to serve in the engineering, deck, steward, electronic technician, or survey departments.

*Shore leave* means a leave of absence, in addition to earned annual leave, that is earned by professional mariners serving aboard NOAA ships, as authorized by section 3079b of title 33, United States Code, and this subpart.

**§ 998.52 Computation of shore leave.**

(a) A professional mariner earns shore leave at the rate of one day of shore leave for each 3 and one-half consecutive days of assignment to a NOAA ship such that a total of up to 4 days of shore leave may be earned in any given pay period.

(b) For a professional mariner, an assignment begins either on the date he or she assumes their duties aboard a NOAA ship or on the date he or she comes aboard when a voyage is in progress. The assignment terminates on the date he or she ceases to be assigned to a NOAA ship or on the date on which he or she is released from assignment of their duties.

(c) In computing days of assignment, the Administration shall also include:

(1) The days a professional mariner spends traveling to join a NOAA ship to which assigned;

(2) The days a professional mariner spends traveling between NOAA ships when the employee is assigned from one NOAA ship to another; and

(3) The days on which the professional mariner is on sick leave when he or she becomes sick during an assignment (whether or not continued as a member of the crew) but not beyond the termination date of the assignment to the NOAA ship.

(d) In computing days of assignment, the Administration shall not include days the professional mariner is on any kind of leave other than sick leave.

**§ 998.53 Granting shore leave.**

(a) *Authority.* (1) A professional mariner has an absolute right to use shore leave, subject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) A professional mariner shall submit his or her request for shore leave in writing and whenever such a request for shore leave is denied, the denial shall be in writing.

(b) *Accumulation.* Shore leave for professional mariners may be accumulated for future use without limitation and is in addition to annual leave.

(c) *Charge for shore leave.* The minimum charge for shore leave is one day and additional charges are in multiples thereof.

(d) *Lump-sum payment.* Shore leave may not be the basis for lump-sum payment on separation from the Administration.

(e) *Terminal leave.* (1) Except as provided by paragraph (e)(2) of this section, NOAA shall not grant shore leave to a professional mariner as terminal leave. For the purpose of this paragraph terminal leave means an approved absence immediately before an employee's separation when an agency knows the employee will not return to duty before the date of his or her separation.

(2) NOAA shall grant shore leave as terminal leave when the professional mariner's inability to use shore leave was due to circumstances beyond his or her control and not due to his or her own act or omission.

(f) *Forfeiture of shore leave.* Shore leave not granted before:

(1) Separation from employment with the Administration, or

(2) Official assignment (other than by temporary detail) to a position within NOAA in which the employee does not earn shore leave, is forfeited. When an official assignment will result in forfeiture of shore leave, NOAA, to the extent administratively practicable shall give an employee an opportunity to use the shore leave he or she has to his or her credit either before the reassignment or not later than 6 months after the date of his reassignment when the agency is unable to grant the shore leave before the reassignment.



**§ 998.54 Pay for temporary promotion.**

Professional mariners serving in a position aboard a NOAA ship to which they have been temporarily promoted pursuant to 5 CFR 335.102(f) shall be paid the difference between their temporary and permanent rates of pay for leave accrued while serving in the temporary promotion position unless:

(a) The professional mariner uses the leave before returning to their permanent position; or

(b) The professional mariner is permanently promoted to the higher position without further competition.

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